IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 159 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH MOHANLAL DAVE

Versus

ASHOK PRAHALADBHAI LIMACHIYA

Appearance:

PARTY-IN-PERSON for Petitioner

MR Ashok P. Limachiya for Respondent No. 1 absent though duly served.

Mr. S.S. Patel, A.P.P.for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/06/2000

ORAL JUDGEMENT

Heard the petitioner Shri Jayesh M. Dave as party -in-person. The respondent no.1 Shri A.P. Limbachiya absent though duly served. Learned A.P.P. Mr. S.S. Patel appears for the respondent no.2.

Rule. Learned A.P.P. Mr. S.S. Patel waives service of rule on behalf of the respondent no.2.

1. The petitioner has challenged the legality and correctness of the order dated 2-2-2000 passed by the Metropolitan Magistrate, Ahmedabad, Court no.20, below Exh.4 in the proceedings of Criminal Case no.656/99.

Vide impugned order the trial Court has stopped the further proceedings of the Criminal complaint, discharged the accused (present respondent no.1) and rejected the complaint.

The petitioner hereinabove has filed Criminal Case no.656/99 against the respondent no.1 in the Court of Metropolitan Magistrate, Ahmedabad, Court no.20, under Sec.138 of the Negotiable Instruments Act, 1881(hereinafter referred to as the "Act") on 11-6-1999 and contended that on 12-2-1998, Rs.50,000/- was advanced to the respondent no.1 by the petitioner, and hence, in order to repay the said amount, the respondent no.1 had drawn cheque bearing no.243539 in favour of the present petitioner dated 1-5-1999 for the said amount of Rs.50,000/- on State Bank of India, Narayannagar Branch, Paldi. It is further contended in the complaint that the respondent no.1 being in further need of money requested to advance another amount of Rs.50,000/- and the petitioner advanced Rs.50,000/- on 17-2-1998. That in order to repay the said amount, the respondent no.1 had drawn and handed-over to the petitioner cheque bearing no.243537 dated 1-5-1999 for Rs.50,000/- drawn in favour of the present petitioner on the State Bank of India, Narayannagar Branch, Paldi. It is also the case of the petitioner that the third time on 20-2-1998 on request of the respondent no.1, the petitioner advanced Rs.50,000/-to the respondent no.1 and to pay the said amount the respondent no.1 had drawn and given to the petitioner cheque bearing no.243538 dated 1-5-1999 for Rs.50,000/-in favour of the petitioner on State Bank of India, Narayannagar Branch, Paldi. That on presentation of the said cheque on 1-5-99 through his banker-Madhupura Mercantile Co-operative Bank Limited, Vasna Branch, Ahmedabad all the three cheques returned dishonoured

alongwith Memo of State Bank of India, Narayannagar Branch, Ahmedabad dated 6-5-1999 containing the remark " account closed ". That thereafter, the present petitioner served a demand notice dated 17-5-1999 for cheque no.243537 which was received by the respondent no.1 on 19-5-1999. However, the respondent no.1 refused to accept the registered notice which has returned to the petitioner with the remark of " refusal". Similarly, the petitioner served notice dated 19-5-1999 for cheque no.243539 and notice dated 20-5-1999 for cheque no.243538. That both the notices are received by the respondent no.1, however, these registered notices were refused by the respondent no.1. That thereafter, the petitioner filed above stated complaint in the Court of Metropolitan Magistrate on 11-6-1999. That after recording the verification, the Court issued summons to the respondent no.1.

2. The respondent no.1 appeared before the trial Court in response to summons and moved application Exh.4 contending that demand notice issued by the petitioner before filing the complaint dated 17-5-1999, 19-5-1999 and 21-5-1999 for dishonour of three different cheques also contain a demand of Rs.1500/- towards notice charges , and as such, demand made by the petitioner as complainant of the said complaint being bad in law, the complaint cannot be prosecuted further and deserves to be dropped.

3. That the trial Court heard the parties on Exh.4 of above stated application and vide impugned order, dropped the proceedings, rejected the complaint and discharged the accused, and thereby, the petitioner has filed the present Revision Application.

4. Perusal of the impugned order suggest that learned Metropolitan Magistrate, Ahmedabad, Court no.20, has misconstrued the fact regarding amount of demand made in the notice and the claim of notice charges made. The trial Court has failed to consider the claim of notice charges as additional claim made separately which is severable than the amount claimed of the dishonoured cheques, and as such, erred in law by holding that the demand made by the petitioner as a complainant being bad in law, the complaint deserves to be rejected.

5. In the case of SUMAN SETHI VS. AJAY K.CHURIWAL & ANR. (JT 2000 (1) SC 493), the Supreme Court has held vide paragraphs 6 and 7 as under:

" The words "said amount of money" occurring in

clause (b) and (c) to the proviso to Section 138. Refers to the words " payment of any amount of money" occurring in main Section 138 i.e. the cheque amount. So in notice, under clause (b) to the proviso, demand has to be made for the cheque amount. The legislature intended that in notice under clause (b) to the proviso, the demand has to be made for the cheque amount.

"Where in addition to "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving up break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If however, in the notice an omnibus demand is made without specifying what was due under the dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad. If in a notice any other sum is indicated in addition to the "said amount" the notice cannot be faulted."

6. That the above stated dicta of the Supreme Court fortifies the view taken by me that the trial Court has grossly erred in construing separate demand of notice charges alongwith the amount of dishonoured cheques in a notice and holding the notice as bad in law. The Court ought not to have rejected the complaint, and dropped the proceedings. The said action on the part of the Court has resulted into miscarriage of justice, and thereby, it is necessary to interfere, quash and set aside the said order and to direct the Court to take the matter on file and decide in accordance with law.

7. In the result, the following order is passed:

The impugned order dated 2-2-2000 passed by the Metropolitan Magistrate, Ahmedabad, Court no.20, below Exh.4 rejecting the criminal complaint i.e. Criminal Case no.656/99 is hereby quashed and set aside. Learned Metropolitan Magistrate, Court no.20, Ahmedabad is directed to restore on file Criminal Case no.656/99 and after following due procedure to decide the complaint in accordance with law. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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